

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARK LATULAS,

Plaintiff,

v.

DECISION AND ORDER
17-CV-802

SPOTCRIME.COM,

Defendant.

The instant civil case filed by Plaintiff Mark Latulas, *pro se*, was referred to Magistrate Judge Jeremiah J. McCarthy pursuant to 28 U.S.C. § 636(b)(1) to conduct pretrial proceedings. Dkt. No. 18.

Defendant ReportSee, Inc. (incorrectly sued as “spotcrime.com”) moved for summary judgment pursuant to Federal Rule of Civil Procedure 56 (Dkt. No. 4), and on November 18, 2021, the Magistrate Judge filed a Report and Recommendation (Dkt. No. 25) recommending that the Court grant Defendant’s motion for summary judgment on Plaintiff’s remaining claim for defamation on the basis that it is time-barred by New York’s one-year statute of limitations.

On December 6, 2021, Plaintiff filed objections to the Report and Recommendation. Dkt. No. 27. Defendant responded (Dkt. 29) on January 3, 2022. No reply has been filed by Plaintiff, although he subsequently filed a motion to appoint counsel (Dkt. No. 30) and a request for a subpoena (Dkt. No. 31). The matter is considered submitted on the papers.

The Court reviews the findings and conclusions of the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), which provides that to the extent a party makes a timely and specific objection to a Magistrate Judge's Report and Recommendation, the standard of review is *de novo*.

Plaintiff appears to argue in his objections that he brought this civil action within one year of his discovery of the alleged defamatory statement. As noted by the Magistrate Judge, however, "there is no 'discovery rule' exception to New York's one-year statute of limitations." Dkt. No. 25, p. 2.

Upon due consideration of the parties' respective papers and arguments, the Court adopts the conclusion and reasoning of the Magistrate Judge's Report and Recommendation.

Accordingly, it is hereby

ORDERED, that for the reasons set forth in the Report and Recommendation (Dkt. No. 25) and this Decision and Order, Defendant's motion for summary judgment (Dkt. No. 4) pursuant to Federal Rule of Civil Procedure 56 is GRANTED; it is further

ORDERED that Plaintiff's remaining claim for defamation is DISMISSED, with prejudice; and it is further

ORDERED that Plaintiff's motion to appoint counsel (Dkt. No. 30) is DENIED as moot; and it is further

ORDERED that Plaintiff's motion for a subpoena or deposition (Dkt. No. 31) is DENIED as moot, and Plaintiff's motion for production of documents (Dkt. No. 9) is likewise DENIED as moot, as recommended in the Report and Recommendation.

The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith and leave to appeal to the Court of Appeals as a poor person is denied. See *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

The Clerk of Court shall enter Judgment in favor of Defendant and shall take all steps necessary to close the case.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: March 23, 2022